

O/0680/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 4137323

IN THE NAME OF ALPAY BUGUR

TO REGISTER THE FOLLOWING TRADE MARK:



IN CLASSES 25, 30 & 43

AND

THE OPPOSITION THERETO UNDER NO. 452844

BY ROAR FITNESS LIMITED

Background and pleadings

1. On 16 December 2024, Alpay Bugur (“the applicant”) applied to register the trade mark shown on the previous page in the UK. The mark was accepted and published in the Trade Marks Journal on 10 January 2025. The goods and services filed under the mark are listed in Annex 1.

2. On 4 March 2025, Roar Fitness Limited (“the opponent”) opposed the trade mark based upon Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). This is on the basis of its earlier UK trade mark:¹

ROAR

UK registration number: UK00003550215

Filing date: 30 October 2020

Registration date: 19 August 2022

For the goods and services listed in Annex 1.

3. By virtue of its earlier filing date, the above registration constitutes an earlier mark in accordance with section 6 of the Act. In accordance with section 6A of the Act, the opponent’s earlier mark is not subject to proof of use and so the opponent may rely upon all the goods and services for which this mark is registered.

4. In its pleadings, the opponent submits that the marks are highly similar and the goods and services are highly similar or identical. As such, the opponent submits there will be a likelihood of confusion between the marks.

5. The applicant filed a counterstatement in which it denies a likelihood of confusion between the marks and notes differences between the goods and services.

¹ The opponent originally relied upon three earlier marks. However, in its written submissions of 13 November 2025, the opponent confirmed that they no longer rely on two of the marks, leaving only their earlier mark UK00003550215.

6. Both parties filed evidence. No hearing was requested. Only the opponent filed submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

7. The opponent is represented by London IP Ltd. The applicant is unrepresented.

8. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. Hence this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

Evidence and submissions

9. The opponent's evidence was filed in the form of a witness statement, dated 13 November 2025. This was filed by James Mitchiner of London IP Ltd, the opponent's representatives. The witness statement includes one exhibit labelled JMAnnex 1. The purpose of this evidence is to support the opponent's written submissions, dated 13 November 2025.

10. The applicant's evidence was filed in the form of a witness statement, dated 3 December 2025. This was filed by the applicant Alpay Bugur, who is the founder and owner of Roar Cacao. The witness statement includes seven exhibits labelled AB1 to AB7. The purpose of the evidence is to support his defence to the opposition. The applicant also filed written submissions with his evidence, dated 3 December 2025.

11. I confirm that I have taken all filed documents into account and will summarise them to the extent that I deem necessary below.

Preliminary issues

12. In his counterstatement, the applicant states that its "clothing in class 25 is limited to brand merchandise (caps, T-shirts, hoodies) to accompany the food brand, not technical sportswear or fitness apparel". The applicant appears to submit that there is no likelihood of confusion on the basis that the parties operate in different market sectors.

13. In his written submissions, dated 3 December 2025, the applicant further differentiates between the marks based on the trade channels that have thus far been used by the opponent and the applicant, providing evidence of this use in its exhibits.

14. I remind myself of the findings of Dr Brian Whitehead sitting as the Appointed Person in the *City Storage Systems LLC v Kenmark Kitchen Limited*,² where he stated (my emphasis):

“18. [...] The authors of Kerly state at 11-055: “it is the goods or services covered by the specification of the marks at issue that must be considered when making this assessment, and not the goods or services actually marketed under those marks”, referring to *Present-Service Ullrich GmbH & Co KG v OHIM* (T-66/11) [2013] E.T.M.R. 29. In that case, the General Court said at 45:

“Secondly, the applicant’s claim that it operates in a completely different commercial sector from the intervener is also irrelevant. In order to assess the similarity of the goods or services at issue for the purposes of art.8(1)(b) of Regulation 207/2009, the group of goods or services protected by the marks at issue must be taken into account, and not the goods or services actually marketed under those marks”.

15. It follows that, in my assessment, I must look at the similarity of the goods and services solely on the basis of those registered and applied for and it is impermissible for me to take into account the goods and services actually marketed by the parties. I must also consider the typical trade channels used for the registered goods and services rather than the trade channels they have thus far been sold through. I thus disregard these submissions from the applicant.

16. Further, in his written submissions, dated 21 March 2025, the applicant states:

“My brand, “Roar Cacao,” is not attempting to capitalise on or misappropriate Roar Fitness Limited’s reputation. Instead, it is clearly positioned in the natural food and wellness sector, which does not directly compete with the opponent’s market.”

² BL O/0065/24

17. Marketing strategies, including the targeting of specific consumers, are temporary and may change over time.³ As such, it is not appropriate to take marketing factors into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods and services at issue.

18. I also note at this stage that the applicant's Exhibit AB5 consists of examples of other businesses using the word 'ROAR' as part of a brand. In relation to evidence pertaining to the state of the register, in *Zero Industry Srl v OHIM*, Case T-400/06, the General Court stated that:

"73. As regards the results of the research submitted by the applicant, according to which 93 Community trade marks are made up of or include the word 'zero', it should be pointed out that the Opposition Division found, in that regard, that '... there are no indications as to how many of such trade marks are effectively used in the market'. The applicant did not dispute that finding before the Board of Appeal but none the less reverted to the issue of that evidence in its application lodged at the Court. It must be found that the mere fact that a number of trade marks relating to the goods at issue contain the word 'zero' is not enough to establish that the distinctive character of that element has been weakened because of its frequent use in the field concerned (see, by analogy, Case T 135/04 *GfK v OHIM – BUS(Online Bus)* [2005] ECR II 4865, paragraph 68, and Case T 29/04 *Castellblanch v OHIM – Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II 5309, paragraph 71). "

19. Although the evidence provided shows use of the word 'ROAR' in the market, I have no evidence of the frequency of its use. The evidence I have been provided does not, in my opinion, indicate that the distinctive character of the word 'ROAR' has been weakened. I do not intend to make further reference to this issue within this decision.

20. In his witness statement, the applicant states that no actual confusion has occurred between its mark and the opponent's earlier mark. I must clarify that the absence of actual confusion will not have any bearing on whether there exists a likelihood of

³ *Devinlec Développement Innovation Leclerc SA v OHIM*, Case C-171/06P

confusion between the marks. Whilst evidence of actual confusion may be persuasive where it exists, the absence of confusion in the marketplace is rarely significant.⁴ This is because the absence of confusion may be attributable to the earlier mark having only been used to a limited extent, in relation to only some of the goods or services for which it is registered, or in such a way that there has been no possibility of the one being mistaken for the other.⁵ The provisions of the Act are not merely a reflection of what may be happening in the market. Even where there is no confusion in practice, it remains possible for there to be a finding of a likelihood of confusion.⁶

Decision

Section 5(2)(b)

21. Section 5(2)(b) of the Act states:

“A trade mark shall not be registered if because-

[...] “(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

Section 5A

22. Section 5A of the Act states:

“Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the

⁴ The European Limited v The Economist Newspaper Ltd [1998] FSR 283.

⁵ Roger Maier and Another v ASOS, [2015] EWCA Civ 220.

⁶ Compass Publishing BV v Compass Logistics Ltd ([2004] RPC 41).

trade mark is applied for, the application is to be refused in relation to those goods and services only.”

The principles

23. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may, in certain circumstances, be dominated by one or more of its components;

(f) and beyond the usual case, where the overall impression created by a mark depends heavily on the dominant features of the mark, it is quite possible that in a particular case an element corresponding to an earlier trade mark may

retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; and

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of the goods and services

24. In comparing the respective specifications, all relevant factors should be considered, as per *Canon*, where the Court of Justice of the European Union (“CJEU”) stated at paragraph 23 of its judgment:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

25. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

a. The respective uses of the respective goods or services;

- b. The respective users of the respective goods or services;
- c. The physical nature of the goods or acts of service;
- d. The respective trade channels through which the goods or services reach the market;
- e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- f. The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

26. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

27. Further, in *Kurt Hesse v OHIM*,⁷ the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*,⁸ the GC stated that “complementary” means:

“...there is close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that

⁷ Case C-50/15 P

⁸ Case T-325/06

customers may think that the responsibility for those goods lies with the same undertaking.”

28. Finally, the judgement of Jacob J (as he then was) in *Avnet Incorporated v Isoact Limited* is also relevant:⁹

“In my view, specifications for services should be scrutinised carefully and they should not be given a wide construction covering a vast range of activities. They should be confined to the substance, as it were, the core of the possible meanings attributed to the rather general phrase.”

29. With this in mind, the goods and services for comparison are listed in Annex 1.

Class 25

Clothing; Ready-to-wear clothing; Clothes; Embroidered clothing; Waterproof clothing; Rainproof clothing; Ready-made clothing; Sports clothing; Athletic clothing; Weatherproof clothing; Water-resistant clothing; Men's clothing; Dance clothing

30. The opponent's 'gymwear; sportswear' fall within the scope of, or overlap in scope with, the above goods. The goods are therefore identical according to the principle outlined in *Meric*.

Shorts [clothing]; Boy shorts [underwear]; Trousers shorts; Shorts; Sweat shorts; Rugby shorts

31. The above goods are identical to, or fall within the scope of, the opponent's 'shorts [clothing]'. The goods are therefore identical either self-evidently, or according to the principle outlined in *Meric*.

Jackets [clothing]; Headbands [clothing]; Headbands for clothing; Gloves [clothing]; Gloves as clothing; Jerseys [clothing]; Hoods [clothing]; Wristbands [clothing]; Visors [clothing]; Jackets being sports clothing; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Bottoms [clothing]; Clothing for cycling; Tops [clothing]; Short-sleeved T-shirts; Polo shirts; Sweat shirts; Rugby shirts; Football shirts; Hooded sweat shirts;

⁹ [1998] F.S.R. 16.

Soccer shirts; Golf shirts; T-shirts; Sport shirts; Tennis shirts; Fishing shirts; Yoga shirts; Under shirts; Tee-shirts; Printed t-shirts; Sleeveless jackets; Sleeved jackets; American football shirts; Undershirts; Tracksuit bottoms; Jogging pants; Sweatshirts; Hoodies; Hooded sweatshirts; Hooded pullovers; Sleeveless jerseys; Snowboard trousers; Long sleeved vests; Athletic tights; Hats; Baseball hats; Ski hats; Caps [headwear]; Caps being headwear; Headgear for wear; Cap visors; Headgear; Headwear; Visors [headwear]; Visors being headwear; Head sweatbands; Fishing headwear; Caps; Caps with visors; Baseball caps; Baseball caps and hats; Sports caps; Golf caps; Tank tops; Tracksuit tops; Tracksuits; Sports caps and hats

32. The above goods fall under the scope of, or overlap in scope with, the opponent's 'gymwear; sportswear'. The goods are therefore identical according to the principle outlined in *Meric*.

Belts [clothing]; Belts for clothing

33. The above goods include belts that are specifically designed for sporting activities that are lightweight, durable and flexible. As such, I consider the above goods to fall within the scope of the opponent's 'sportswear'.

34. However, if I am wrong, I consider the opponent's 'sportswear' to include golf trousers which typically have belt loops. The goods overlap in user. However, they differ in purpose and nature. Trade channels overlap as both goods will be sold in clothing and sports stores. There is no competition. There is a degree of complementarity as the above goods require trousers with belt loops, and it is likely that a user would conclude that the responsibility for both goods would lie with the same entity. Overall, I find the above goods to have a low similarity to the opponent's 'sportswear'.

Beach clothing

35. The above goods include swimwear designed for use at the beach, while the opponent's 'sportswear' includes swimwear designed for use during sport. The purpose of the goods broadly overlaps as they cover the user's body whilst the user is swimming. However, the specific purposes differ where the opponent's goods are designed to streamline the body and enhance sport performance, while the above

goods are intended as fashion apparel. Users differ as the opponent's goods will be used by sportspersons, while the above goods will be used by the general public. The nature of the goods overlaps as both will be similarly shaped and may be made of similar materials intended for use in the water. Trade channels overlap as both will be sold in clothing stores, although only the opponent's goods will also be sold in sports stores. There may be an element of competition between the goods as a user may choose to purchase either a sports swimsuit or a swimsuit intended for the beach to swim in. There is no complementarity. Overall, I find the above goods to have a medium similarity to the opponent's 'sportswear'.

Camouflage shirts

36. The above goods overlap in scope of the opponent's 't-shirts'. The goods are therefore identical according to the principle outlined in *Meric*.

Camouflage pants

37. The above goods are worn by persons engaging in sports such as fishing and hunting. As such, I consider that the above goods fall within the scope of the opponent's 'sportswear'. The goods are therefore identical according to the principle outlined in *Meric*.

38. However, if I am wrong, the above 'camouflage pants' is most similar to the opponent's 'track pants'. The users of the goods overlap as both are used by members of the general public and those engaging in sport. Their purpose broadly overlaps as both cover a user's legs, although their specific purpose differs where the above goods are intended to disguise a user, while the opponent's goods are intended to keep a user cool and dry while exercising. The nature of the goods broadly overlap as the shape of the goods is similar where all the goods are shaped to fit a user's legs and both can be made out of materials suitable for moisture-wicking. Trade channels will overlap as both of the goods will be sold in clothing stores and outdoor/sports stores. There is a degree of competition as a user may choose either camouflage pants or track pants to cover their legs during sporting activities. There is no complementarity. Overall, I find the above goods to have a medium to high similarity to the opponent's 'track pants'.

Casual clothing

39. The opponent's 'Shorts [clothing]; Short-sleeved T-shirts; Sweat pants; Sweat shirts; Vest tops; Vests; Tee-shirts; Track pants; Tracksuit tops; T-shirts' fall within the scope of the above goods. The goods are therefore identical according to the principles of *Meric*.

Casual trousers; Sweatpants; Sweat pants

40. The opponent's 'sweat pants' are identical to, or fall under the scope of, the above goods. The goods are therefore identical according to the principle outlined in *Meric*.

Pyjamas

41. The above goods include sleepwear in the form of shorts and t-shirts. I consider that the goods are most similar to the opponent's 'shorts [clothing]' and 't-shirts'. I do not consider the above goods to fall within the scope of these goods as ordinary daytime clothing does not plainly fall within pyjamas. The purpose of the goods very broadly overlaps as all of the goods are intended to cover the user's body, but the specific purposes differ where the above goods are specifically designed for sleep, while the opponent's goods are for daytime wear. Users overlap as both will be used by members of the general public. The nature of the goods also overlaps as pyjama shorts and t-shirts are similar in shape, style and material to their pyjama counterparts. However, daytime clothing may be made of harder-wearing materials. Trade channels overlap as both of the goods will be sold in clothing stores. There is no competition or complementarity. Overall, I find the above goods to have a medium similarity to the opponent's 'shorts [clothing]; t-shirts'.

Aprons [clothing]

42. The above goods are protective articles worn during baking, painting or other activities where a user's clothing needs to be protected. These goods are most similar to the opponent's 't-shirts'. The users of the goods are the same, as both will be used by the general public. However, the purpose differs as the above goods are used to protect a user's clothes while the opponent's goods are used to provide upper body coverage. The nature of the goods broadly overlaps as both are garments that can be

made of a variety of fabrics. Trade channels will differ as the above goods will be sold in baking or craft stores, while the opponent's goods will be sold in clothing stores. I note that both may be sold in supermarkets, although they are likely to be found on separate shelves. There is no competition or complementarity. Overall, I find the above goods to have a low similarity to the opponent's 't-shirts'.

Dress shirts; Knit shirts; Night shirts; Sleep shirts; Collared shirts; Turtleneck shirts; Polo knit tops; Shirts; Short-sleeved shirts; Long-sleeved shirts; Short-sleeve shirts; Open-necked shirts; Casual shirts;

43. The above goods are most similar to the opponent's 't-shirts'. The users of the goods overlap, as does the purpose, which is to provide covering to the user's torso. The nature of the goods overlaps as both goods can be made of the same materials and are broadly the same shape, although their specific shapes differ. Trade channels overlap as both goods will be sold in clothing stores. There is competition between the goods as a user may choose any of the goods to cover their torso. There is no complementarity. Overall, I find the above goods highly similar to the opponent's 't-shirts'.

Shirt fronts

44. The above goods are detachable inserts intended to simulate the front of a shirt. They are most similar to the opponent's 't-shirts'. The users overlap. The purpose of the goods differs as the above goods are intended to simulate the front of a shirt, while the opponent's goods are intended to cover a user's torso. The nature broadly overlaps as both goods can be made of the same material, although the shapes of the goods clearly differ. Trade channels overlap as both goods will be sold in clothing stores. There is no competition or complementarity. Overall, I find the above goods to have a low similarity to the opponent's 't-shirts'.

V-neck sweaters; Jumpers; Jumper dresses; Jumpers [sweaters]; Jumpers [pullovers]; Knit jackets; Polo sweaters; Turtleneck sweaters; Knitwear [clothing]; Knitted clothing

45. The above goods are most similar to the opponent's 'sweat shirts'. The users of the goods overlap, as does the purpose, which is to provide an additional layer of clothing to the user's torso for warmth. The nature of the goods broadly overlap as the shape of the goods is similar where all the goods are, or can be, shaped to fit a user's torso, but they will be made of different materials, with the above goods typically knitted from wool or other similar materials, and the opponent's goods being made of cotton or similar materials. Trade channels will overlap as all of the goods will be sold in clothing stores. There is competition as a user may choose either a jumper/sweater/knitted item of clothing or sweatshirt to provide warmth. There is no complementarity. Overall, I find the above goods to have a medium to high similarity to the opponent's 'sweat shirts'.

Beanie hats; Bobble hats; Bucket hats; Woolly hats; Fashion hats; Beach hats; Beanies; Bonnets [headwear]; Bucket caps

46. The above goods are most similar to the opponent's 'baseball caps'. The users overlap as all of the goods will be used by the general public. The nature of the goods broadly overlap as all of the goods are somewhat similar in shape, all being hats, but more specifically differs where the hats are different specific shapes and are made of different materials. The purpose of the goods broadly overlap as all of the goods have the purpose of covering the user's head. However, the specific purpose differs where some of the goods are intended to protect the head from the sun or cold weather. Trade channels overlap as all of the goods will be sold in clothing and accessories stores. There is competition as a user may choose any of the goods to cover their head. There is no complementarity. Overall, I find the above goods to have a medium to high level of similarity to the opponent's 'baseball caps'.

Face masks [fashion wear]

47. The above goods are face coverings intended to be worn as items of fashion or apparel. Although I acknowledge that face masks can be used for protection in sports, and therefore could be considered sporting articles, these are not covered by the term 'sportswear', nor are they found within class 25 of the Nice classification.

48. I cannot find any overlap between the above goods and any of the opponent's goods or services. With no submissions to this point, I find the above goods dissimilar to the opponent's goods and services.

Class 30

49. Cocoa nibs; Extracts of cocoa for use as flavours in beverages; Cocoa extracts for human consumption; Chocolate extracts; Chocolate flavourings

50. The above goods are all extracts or preparations of cocoa and chocolate. They are most similar to the opponent's 'coffee', which can include powdered coffee. The users overlap, as does the nature as they can all be provided in powdered form. The purpose and method of use overlaps as they can all be used to provide a flavour, although the opponent's coffee also has the purpose of providing caffeine. I acknowledge the opponent's submissions that chocolate/cocoa products contain caffeine, although I do not consider that they are consumed for the purpose of providing caffeine to the user as coffee typically is. Trade channels overlap as all of the goods can be purchased in a supermarket. There is no competition or complementarity. Overall, I find the above goods to have a medium level of similarity to the opponent's 'coffee'.

Chocolate syrup; Chocolate syrups; Chocolate sauce; Chocolate sauces; Chocolate topping; Chocolate for toppings

51. I find that there is a degree of similarity between the opponent's 'coffee; coffee-based drinks' and above goods. It is acknowledged that the goods differ in nature and purpose in that coffee is a beverage product, whereas chocolate syrups, sauces and toppings are sweet food preparations used primarily as flavourings, toppings or accompaniments. However, I am of the view that there may be some overlap in users and trade channels, as chocolate syrups on chocolate toppings may be used in the preparation or flavouring of coffee-based drinks. Overall, I find the similarity to be low.

Foods with a cocoa base; Chocolate; Chocolate truffles; Dairy-free chocolate; Chocolate coated macadamia nuts; Almonds covered in chocolate; Chocolate coated fruits; Chocolate brownies; Chocolate bars; Chocolate fudge; Chocolate shells; Chocolate wafers; Chocolate coated nuts; Chocolate eggs; Chocolate mousses;

Chocolate confectionery products; Confectionery chocolate products; Chocolate pastries; Chocolate desserts; Chocolate confectionery; Chocolate cake; Chocolate cakes; Chocolate waffles; Chocolate bunnies; Mousses (Chocolate -); Chocolate covered cakes; Ice creams flavoured with chocolate; Chocolates; Filled chocolate bars; Ice creams containing chocolate; Chocolate fillings for bakery products; Frozen yoghurt; Frozen yoghurts; Frozen yogurt; Porridge; Porridge oats; Ice-cream; Oat porridge; Milk chocolates

52. The above goods are all foodstuffs, while the opponent's goods are 'coffee; coffee-based drinks'. The users of the goods overlap. The purpose and method of use differ as the above goods are eaten to satisfy the user's hunger, while the opponent's goods are drunk to quench the user's thirst. Trade channels overlap as all the above goods and the opponent's goods will be purchased in supermarkets, convenience stores restaurants and cafés. There is no competition between the goods. In its pleadings, the opponent states that the above goods are complementary to its goods. As noted above, complementarity requires both for one of the goods to be indispensable or important for the use of the other, and for consumers to think that the responsibility for the goods lies with the same undertaking. I do not consider that coffee or coffee-based drinks are indispensable or important for the use of the above foodstuffs, or vice versa. There is therefore no complementarity. Overall, I find the above goods dissimilar to the opponent's 'coffee; coffee-based drinks'.

53. I will also compare the above goods to the opponent's 'nutritional supplement energy bars'. The users of the goods overlap as they will all be used by the general public. The purpose and method of use of the goods broadly overlaps as all of the goods will be consumed to satisfy the user's hunger, although the primary purpose of the opponent's goods is to provide nutritional supplements and energy. Trade channels differ as, although all of the goods may be sold in supermarkets, they are likely to be found on different shelves within the store. There may be competition as a user may select any of the above products or an energy bar to satisfy their hunger. There is no complementarity. Overall, I find the above goods to have a low similarity to the opponent's 'nutritional supplement energy bars'.

Chocolate coating; Chocolate flavoured coatings; Chocolate pastes; Chocolate spreads; Chocolate spread; Chocolate fondue

54. The above goods are all chocolate products that can be consumed on or with food, while the opponent's goods are 'coffee; coffee-based drinks'. The users of the goods overlap. The purpose and method of use differ as the above goods are used to add chocolate flavour to a food, while the opponent's goods are drunk to quench the user's thirst. Trade channels overlap as all the above goods and the opponent's goods will be purchased in supermarkets, convenience stores restaurants and cafés. There is no competition between the goods. As above, I do not consider that coffee or coffee-based drinks are indispensable or important for the use of the above chocolate products, or vice versa. There is therefore no complementarity. Overall, I find the above goods dissimilar to the opponent's 'coffee; coffee-based drinks'.

Cocoa beverages; Cocoa drinks; Prepared cocoa and cocoa-based beverages; Beverages with a cocoa base; Chocolate beverages; Ice beverages with a cocoa base; Drinks prepared from cocoa; Chocolate beverages with milk; Drinks flavoured with chocolate; Chocolate drink preparations flavoured with banana; Beverages with a chocolate base; Chocolate drink preparations; Ice beverages with a chocolate base; Drinking chocolate; Beverages made with chocolate; Beverages made from chocolate; Drinks containing chocolate; Hot chocolate; Vegan hot chocolate

55. The above goods are all beverages, or mixes to make beverages, containing cocoa or chocolate. These goods are most similar to the opponent's 'coffee-based drinks'. The goods overlap in user and in nature, as all the goods are liquid beverages that will be consumed by the general public. The purpose broadly overlaps as they are all intended primarily to quench a user's thirst, although their specific purpose differs as a user may choose to drink a coffee-based drink as a means to consume caffeine. Trade channels likely overlap as the goods will all be sold in cafés and supermarkets. There may be competition between the goods as a user may choose either a coffee-based drink or a cocoa-based drink to quench their thirst. There is no complementarity. Overall, I find the above goods highly similar to the opponent's 'coffee-based drinks'.

Drinking cocoa paste

56. The above goods are most similar to the opponent's 'coffee', which includes the powder or granules used to make a coffee-based drink. The nature of the goods differ as I do not consider it common for coffee to be sold as a paste, rather it is typically

sold as powder or granules. However, their users overlap, as does the purpose, which is to make a beverage when mixed with water or other liquids. Trade channels overlap as both will be sold in supermarkets. There may be competition because a user may choose between a coffee powder or a drinking cocoa paste to make a hot drink. There is no complementarity. Overall, I find the above goods to have a higher than medium similarity to the opponent's 'coffee'.

Cocoa products; Hot cocoa mix; Drinks in powder form containing cocoa; Hot chocolate mixes; Cacao powder; Cocoa; Cocoa powder; Cocoa mixes; Cocoa preparations; Chocolate powder

57. The above goods are, or include, powders used to make cocoa-based drinks. These goods are most similar to the opponent's 'coffee' which includes powdered or granulated coffee. The nature of the goods overlaps where all the goods can be powders. The users overlap, as does the purpose, which is to make a beverage when mixed with water or other liquids. Trade channels overlap as both will be sold in supermarkets. There may be competition because a user may choose between a coffee powder or a hot cocoa powder to make a hot drink. There is no complementarity. Overall, I find the above goods highly similar to the opponent's 'coffee'.

Class 43

58. In its pleadings, the opponent pleads that the contested services in class 43 are similar to its coaching and training services in class 41 due to the services being complementary. It further pleads that its foodstuff goods in classes 5 and 30 will be expected to be offered as part of the above hospitality services.

59. Firstly, considering the services under class 41, which relate primarily to personal fitness training. The opponent's suggestion that the services are complementary appears to be related to the services being offered in the same location. I agree that it is not uncommon for gyms and leisure centres to have restaurants and cafés. However, as noted above, complementarity requires both for one of the services to be indispensable or important for the use of the other, and for consumers to think that the responsibility for the services lies with the same undertaking. To the first point,

although the services are commonly provided in the same location, I do not consider it reasonable to argue that either service is indispensable for the other. It is possible that some consumers may assume that the responsibility for restaurant services provided inside a gym would lie with the same undertaking as the gym itself. However, given that I do not consider the services to be indispensable to each other, I cannot find complementarity. The users of the services overlap, however they differ in purpose, nature and trade channel, and there is no competition between them. Overall, I find the above services dissimilar to the opponent's services in class 41.

60. I will proceed to consider similarity between each of the contested services under class 43 and the opponent's foodstuff goods in classes 5 and 30.

Coffee bar services; Cafe services; Café services

The above services are different in nature, purpose and method of use to the opponent's 'coffee; coffee-based drinks'. However, it is clear that the above services include the sale of coffee and coffee-based drinks. The provision of coffee bar services requires coffee and many, although not all, coffee companies produce their own coffee which is then sold in their coffee bars/café. I therefore find a degree of complementarity between the contested 'coffee bar services' and the opponent's 'coffee; coffee-based drinks'. The nature and purpose of the goods and services differ. The goods and services are also distributed through the same trade channels. The goods and services are not in direct competition. However, there may be a limited degree of competition where a consumer can choose between purchasing coffee for preparation themselves or can purchase coffee prepared and services through café services. Overall, I find a low level of similarity between the opponent's 'coffee; coffee-based drinks' and the above services.

Take-away food and drink services; Takeaway food and drink services

I accept that the above services differ in nature from the opponent's 'coffee; coffee-based drinks', one being goods and the other services, and that their immediate purpose is not the same. However, take-away food and drink services may include the provision of coffee and coffee-based drinks, and such drinks are commonly supplied through take-away cafés, coffee shops and fast-food outlets. There is therefore an overlap in users and, to some extent, trade channels. There is also a degree of

complementarity, since coffee and coffee-based drinks may be supplied in the course of the applicant's services. As above, there may be a limited degree of competition where a consumer can choose between purchasing coffee for preparation themselves or can purchase coffee prepared and services through café services. Overall, I find a low level of similarity between the opponent's 'coffee; coffee-based drinks' and the above services.

Sushi restaurant services; Fast-food restaurant services; Hotel restaurant services; Take-out restaurant services; Bar and restaurant services; Restaurant and bar services; Take-away restaurant services; Carvery restaurant services; Restaurant services; Salad bars [restaurant services]; Restaurants; Carry-out restaurants; Japanese restaurant services; Self-service restaurant services; Grill restaurants; Mobile restaurant services; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Restaurants (Self-service -); Self-service restaurants; Restaurant services for the provision of fast food; Tourist restaurants; Fast food restaurants; Restaurant services incorporating licensed bar facilities; Bistro services; Delicatessens [restaurants]; Providing food and drink for guests in restaurants; Provision of food and drink in restaurants; Providing restaurant services; Providing food and drink in restaurants and bars; Restaurant services provided by hotels; Brasserie services; Providing food and drink in bistros; Take-away food services; Takeaway food services; Take-away fast food services; Self-service cafeteria services; Cafeteria services; Juice bars; Juice bar services; Eateries; Snack bar services; Hospitality services [food and drink]; Hotel catering services; Club services for the provision of food and drink; Night club services [provision of food]; Private members dining club services; Hookah bar services; Serving food and drink for guests; Serving food and drinks; Providing food and drink for guests

61. I consider that the above services would include the provision of the opponent's goods in class 30, and possibly those in class 5. However, I am not convinced that the goods are indispensable for the above services. Even if this is the case, I do not consider it likely that consumers would think that the responsibility for the foodstuff goods would lie with the same undertaking as the restaurant services. As such, I do not find complementarity between the goods and services.

62. The above services are different in nature, purpose and method of use to the opponent's goods. The goods and services may be distributed through the same trade channels. There is no competition or complementarity. Overall, I find the opponent's goods in classes 5 and 30 dissimilar to the above services.

Restaurant information services; Reservation and booking services for restaurants and meals; Hotel reservations; Making reservations and bookings for restaurants and meals; Providing reviews of restaurants and bars; Providing hotel and motel services; Providing reviews of restaurants; Hotel room booking services; Hotel accommodation services; Reservation of restaurants; Booking of restaurant seats; Resort hotel services; Restaurant reservation services

63. The above services are restaurant-related services not linked to providing or selling food and drink. I cannot find any similarity between these services and the opponent's goods. With no specific submissions on this, I find the above services are dissimilar to the opponent's goods.

Catering; Catering of food and drinks; Food and drink catering for banquets; Catering of food and drink; Catering (Food and drink -); Food and drink catering; Food and drink catering for institutions; Food and drink catering for cocktail parties; Cocktail lounge buffets; Catering services for company cafeterias; Catering for the provision of food and drink; Providing food and drink catering services for exhibition facilities; Corporate hospitality (provision of food and drink); Catering services for providing European-style cuisine; Catering services for the provision of food and drink; Catering in fast-food cafeterias

64. The above services are catering services, which typically involve providing food and drink at events or within company cafeterias. I accept that the opponent's 'coffee; coffee-based drinks' are likely to be provided as part of the above services, although I do not consider that the goods under class 5 are likely to be provided. Despite this, I am not convinced that the coffee goods are indispensable for the catering services. Additionally, I do not consider it likely that consumers would assume that the same entity would be responsible for the catering services and coffee or coffee-based drinks; I consider it likely that the consumer would assume that a third-party was responsible

for the coffee and coffee-based drinks. As such, I find no complementarity between the opponent's goods and the above services.

65. The above services are different in nature, purpose and method of use to the opponent's goods. The goods and services may be distributed through the same trade channels. There is no competition or complementarity. Overall, I find the opponent's goods in classes 5 and 30 dissimilar to the above services.

Serving food and drink in Internet cafes; Providing food and drink in Internet cafes;

66. I consider that the above services would include the provision of all of the opponent's goods in classes 5 and 30. However, I am not convinced that these goods are indispensable for the provision of food and drink in general. Even if this is the case, I do not consider it likely that consumers would think that the responsibility for the foodstuff goods would lie with the same undertaking as the provision of food and drink services. As such, I do not find complementarity between the goods and services.

67. The above services are different in nature, purpose and method of use to the opponent's goods. The goods and services may be distributed through the same trade channels. There is no competition or complementarity. Overall, I find the opponent's goods in classes 5 and 30 dissimilar to the above services.

Conclusion of goods and services comparison

68. There can be no likelihood of confusion in respect of section 5(2)(b) of the Act regarding the applicant's goods and services which were found to be dissimilar to the opponent's goods.¹⁰ In light of my findings above, the present opposition fails against the following goods and services:

Class 25: Face masks [fashion wear].

Class 43: Sushi restaurant services; Fast-food restaurant services; Hotel restaurant services; Take-out restaurant services; Bar and restaurant services; Restaurant and bar services; Take-away restaurant services; Carvery restaurant services; Restaurant services; Salad bars [restaurant services];

¹⁰ *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

Restaurants; Carry-out restaurants; Japanese restaurant services; Self-service restaurant services; Grill restaurants; Mobile restaurant services; Serving food and drink for guests in restaurants; Serving food and drink in restaurants and bars; Restaurants (Self-service -); Self-service restaurants; Restaurant services for the provision of fast food; Tourist restaurants; Fast food restaurants; Restaurant services incorporating licensed bar facilities; Bistro services; Delicatessens [restaurants]; Providing food and drink for guests in restaurants; Provision of food and drink in restaurants; Providing restaurant services; Providing food and drink in restaurants and bars; Restaurant services provided by hotels; Brasserie services; Providing food and drink in bistros; Take-away food services; Takeaway food services; Take-away fast food services; Self-service cafeteria services; Cafeteria services; Juice bars; Juice bar services; Eateries; Snack bar services; Hospitality services [food and drink]; Hotel catering services; Club services for the provision of food and drink; Night club services [provision of food]; Private members dining club services; Hookah bar services; Serving food and drink for guests; Serving food and drinks; Providing food and drink for guests; Restaurant information services; Reservation and booking services for restaurants and meals; Hotel reservations; Making reservations and bookings for restaurants and meals; Providing reviews of restaurants and bars; Providing hotel and motel services; Providing reviews of restaurants; Hotel room booking services; Hotel accommodation services; Reservation of restaurants; Booking of restaurant seats; Resort hotel services; Restaurant reservation services; Catering; Catering of food and drinks; Food and drink catering for banquets; Catering of food and drink; Catering (Food and drink -); Food and drink catering; Food and drink catering for institutions; Food and drink catering for cocktail parties; Cocktail lounge buffets; Catering services for company cafeterias; Catering for the provision of food and drink; Providing food and drink catering services for exhibition facilities; Corporate hospitality (provision of food and drink); Catering services for providing European-style cuisine; Catering services for the provision of food and drink; Catering in fast-food cafeterias; Serving food and drink in Internet cafes; Providing food and drink in Internet cafes.

69. I will proceed with the opposition based on the goods and services that I have found to be similar.

Average consumer and the purchasing act

70. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

71. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

- (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
- (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;

(e) The average consumer's level of attention varies according to the category of goods or services in question; and

(f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

72. The goods and services at issue will be purchased by members of the general public. These consumers will take factors such as price and quality into account. I consider that these consumers will pay a medium degree of attention during the purchasing process.

73. Some of the goods at issue will also be purchased by members of the business community, such as owners of cafés buying coffee to sell on their premises. These consumers will also take factors such as price and quality into account but additionally will be acutely aware that the goods they are selecting will be consumed by their customers. Due to this increased responsibility and liability, consumers from the business community will likely demonstrate at least a medium level of attention when purchasing these goods.

74. The goods and services at issue will be purchased through catalogues, online or in-person in stores. Although I do not discount aural considerations as advice may be sought from a sales advisor, I consider that visual considerations will play a larger role as the consumer will see the products in the catalogue, in the store or on the website.

Comparison of marks

75. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in *Case C-591/12P, Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

76. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

77. The respective trade marks are shown below:

The opponent’s earlier mark	The applicant’s contested mark
	

78. In its written submissions, the opponent submits that the marks are highly visually, aurally and conceptually similar. It further submits that the word ‘ROAR’ is the dominant element in the contested mark, with ‘CACAO’ being a diminutive visual element. It submits that the ‘roaring ape’ device element is a visual support to the ‘ROAR’ element.

79. In its written submissions, the applicant states that the ‘CACAO’ element fundamentally alters the conceptual meaning of the mark, resulting in the marks having a low to medium similarity overall.

Overall impression

80. The opponent's earlier mark consists of the word 'ROAR' in a slightly stylised typeface. I find that the overall impression of the mark lies in the word itself. Whilst the stylisation is not negligible, it makes a relatively minor contribution to the overall impression, and therefore plays a secondary role.

81. The contested mark consists of the word 'ROAR' in large letters, 'CACAO' in much smaller letters underneath, and a device element depicting a gorilla-like animal with its mouth open as if it is roaring, surrounded by leaves. The mark is in a cream and green colour with a black background. Due to their size and position within the mark, I find that both the gorilla-like device element and the word 'ROAR' feature prominently in forming the overall impression. However, I find that the eye is initially naturally drawn to the element of the mark that can be easily read, namely 'ROAR', keeping in mind *MigrosGenossenschafts-Bund v EUIPO*, T-68/17. This word therefore forms the main distinctive element. I find that the word 'CACAO', due to its size and position in the mark, plays a lesser role, with the colours, background and stylised typeface present in the mark playing a much lesser role.

Visual comparison

82. The marks visually overlap where they both contain the word 'ROAR', which dominates both marks.

83. The marks visually differ where both are stylised and the contested mark further contains the word 'CACAO' and the device element, which features prominently.

84. The visual differences between the marks result in the marks having a medium degree of visual similarity.

Aural comparison

85. The device element of the contested mark has no aural nature. The two words of the contested mark will be pronounced in the usual way.

86. The opponent's earlier mark consists of the word 'ROAR', which will also be pronounced in the usual way.

87. The aural nature of the marks identically overlap with respect to the word 'ROAR' and differ in regard to the word 'CACAO' present in the contested mark. Overall, the marks have a medium degree of aural similarity.

Conceptual comparison

88. Both marks contain the word 'ROAR'. This dictionary word will be understood as a verb or noun relating to a loud, deep sound that is typically associated with certain animals. The conceptual nature of the word will be the same in both marks.

89. The earlier mark contains only this word in a stylised font. As a result, this is the only conceptual nature of the mark.

90. The contested mark further contains a device element which depicts a gorilla-like animal with its mouth open, as if roaring. This device element, to some extent, reinforces the meaning of the word 'ROAR'.

91. The contested mark further contains the word 'CACAO'. In relation to sweet food or drink goods and services, this word will be considered descriptive. For these goods, the marks are highly similar in their conceptual nature.

92. In relation to other food goods, other restaurant services and clothing, the word 'CACAO' will not be seen as descriptive. As such, this word will act as a point of conceptual dissimilarity. For these goods, the marks have a medium conceptual similarity.

Distinctive character of the earlier trade mark

93. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-

108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51)."

94. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. As no evidence of use has been filed, I cannot assess whether the distinctiveness of the earlier mark has been enhanced. Consequently, I have only inherent distinctiveness to determine.

95. The earlier mark consists of the word 'ROAR' presented in a slightly stylised typeface. I bear in mind that whilst neither descriptive nor allusive of the goods and services at issue, 'ROAR' is a common English dictionary word meaning, amongst other things, a loud, deep sound typically associated with certain animals, such as a lion. As a dictionary word, this mark possesses a medium degree of inherent distinctiveness. The stylisation of the word does not alter the distinctiveness of the mark.

GLOBAL ASSESSMENT – Conclusions on Likelihood of Confusion

96. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle, i.e., a lesser degree of

similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods (or services) and vice versa (*Canon* at [17]). It is necessary to keep in mind the distinctive character of the opponent's trade mark, the average consumer of the goods and the nature of the purchasing act. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

97. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related.

98. Earlier in this decision, I found the relevant goods and services to range from between similar to a low degree to identical. I found the marks to be visually and aurally similar to a medium degree. I found the marks to either have a high or medium degree of conceptual similarity, depending on the goods and services. I identified the average consumers to be members of the general public, paying a medium degree of attention or members of the business community paying at least a medium degree of attention. I found that the goods and services would be selected primarily by visual means, although I did not discount aural considerations. I found the earlier mark to have a medium degree of inherent distinctiveness.

99. As noted above, the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind (*Lloyd Schuhfabrik* at [26]).

100. Firstly, considering direct confusion, I note the visual and aural differences between the marks, being the device element and additional word 'CACAO' in the contested mark. However, I found that, for goods and services related to food and drink, the word 'CACAO' would be seen as allusive, and results in a high level of conceptual similarity between the marks. For the other goods and services, I did not find this word allusive; however, I did consider the word to play a smaller role in the

mark due to its size and position in the mark. Additionally, I found that the device element, to some extent, reinforces the meaning of the word 'ROAR'. Considering this, and the consumer's imperfect recollection, I consider it likely that consumers would forget which marks include these additional elements and which do not. I am satisfied that the average consumer will pin their recollection of the marks at issue on the word ROAR. I therefore find direct confusion between the contested marks and the earlier mark in respect of all of the goods and services that have been found to have at least a low similarity.

101. If I am wrong to conclude that the fact that the device element reinforces the meaning of the word 'ROAR' would result in the device element being overlooked, I will proceed to consider whether there is a likelihood of indirect confusion, whilst reminding myself that, as James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/219/16) at [16], "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion".

102. In *L.A. Sugar Limited v By Back Beat Inc*, BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: 'The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark'.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI' etc.).
- (c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

103. While the above examples in *L.A. Sugar* are noted, they are not intended to be treated as an exhaustive list of the only instances in which indirect confusion occurs.

104. Earlier I found that the word 'ROAR' is the main distinctive element in both marks. Further, I found that the stylisation of this word in both marks plays a very small role. I found that the device element of the contested mark also features prominently in the mark. I found that the word 'CACAO' in the contested mark plays a lesser role due to its size and position. I additionally found that the stylisation of the words play a much lesser role in both marks. Overall, I consider that the word 'ROAR' has an independent distinctive significance in both of the marks.

105. Taking all of this into account, I find it likely in this instance that a consumer who has previously encountered similar goods or services under the earlier mark will see a similar or identical product under the contested mark and note the addition of the device element and the word 'CACAO'. For goods and services related to food and drink, the word 'CACAO' would be overlooked as it is allusive or descriptive. For other goods and services, the consumer will still consider 'ROAR' as an indication of origin in both marks. They would attribute the additional elements to an alternative range of goods or services from the same origin, particularly considering that the device element somewhat reinforces the meaning of the word 'ROAR'. The consumer is

therefore likely to conclude that the goods are supplied by the same, or economically-linked, undertakings.

106. Taking all of this into account, I consider there to be a likelihood of indirect confusion in relation to the applicant's goods and services where there is at least a minimum degree of similarity.

CONCLUSION

107. The opposition under section 5(2)(b) succeeds in respect of the following goods and services:

Class 25: Clothing; Knitwear [clothing]; Jackets [clothing]; Ready-to-wear clothing; Headbands [clothing]; Headbands for clothing; Gloves [clothing]; Gloves as clothing; Clothes; Aprons [clothing]; Jerseys [clothing]; Shorts [clothing]; Hoods [clothing]; Embroidered clothing; Wristbands [clothing]; Belts [clothing]; Belts for clothing; Rainproof clothing; Casual clothing; Waterproof clothing; Visors [clothing]; Jackets being sports clothing; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Bottoms [clothing]; Ready-made clothing; Sports clothing; Athletic clothing; Tops [clothing]; Clothing for cycling; Weatherproof clothing; Water-resistant clothing; Beach clothing; Men's clothing; Dance clothing; Shirts; Turtleneck shirts; Short-sleeved shirts; Dress shirts; Long-sleeved shirts; Short-sleeve shirts; Open-necked shirts; Short-sleeved T-shirts; Polo shirts; Knit shirts; Sweat shirts; Casual shirts; Rugby shirts; Football shirts; Hooded sweat shirts; Soccer shirts; Golf shirts; T-shirts; Night shirts; Trousers shorts; Sport shirts; Tennis shirts; Sleep shirts; Fishing shirts; Yoga shirts; Under shirts; Tee-shirts; Boy shorts [underwear]; Printed t-shirts; Sleeveless jackets; Shorts; Sweatpants; Sweat pants; Sleeved jackets; American football shirts; Polo sweaters; Turtleneck sweaters; Casual trousers; Sweat shorts; Undershirts; Rugby shorts; Tracksuit bottoms; Jogging pants; Sweatshirts; Hoodies; Hooded sweatshirts; Hooded pullovers; V-neck sweaters; Beanie hats; Camouflage shirts; Camouflage pants; Sleeveless jerseys; Collared shirts; Shirt fronts; Jumpers; Jumper dresses; Jumpers [sweaters]; Jumpers [pullovers]; Polo knit tops; Snowboard trousers; Long sleeved vests; Athletic tights; Hats; Bobble hats; Bucket hats; Woolly hats;

Baseball hats; Ski hats; Fashion hats; Beach hats; Sports caps and hats; Beanies; Caps [headwear]; Caps being headwear; Headgear for wear; Bonnets [headwear]; Cap visors; Headgear; Headwear; Bucket caps; Visors [headwear]; Visors being headwear; Head sweatbands; Knit jackets; Knitted clothing; Fishing headwear; Caps; Caps with visors; Baseball caps; Baseball caps and hats; Sports caps; Golf caps; Tank tops; Tracksuit tops; Tracksuits; Pyjamas.

Class 30: Cacao powder; Cocoa; Cocoa nibs; Cocoa powder; Cocoa products; Cocoa beverages; Cocoa drinks; Foods with a cocoa base; Chocolate; Chocolate truffles; Cocoa mixes; Prepared cocoa and cocoa-based beverages; Beverages with a cocoa base; Drinking cocoa paste; Cocoa preparations; Chocolate extracts; Cocoa extracts for human consumption; Extracts of cocoa for use as flavours in beverages; Dairy-free chocolate; Chocolate coated macadamia nuts; Chocolate powder; Almonds covered in chocolate; Chocolate coated fruits; Chocolate syrup; Chocolate brownies; Ice beverages with a cocoa base; Chocolate syrups; Chocolate flavourings; Chocolate beverages; Chocolate bars; Chocolate fudge; Chocolate shells; Chocolate wafers; Chocolate coated nuts; Chocolate eggs; Chocolate mousses; Drinking chocolate; Chocolate fondue; Chocolate confectionery products; Confectionery chocolate products; Drinks prepared from cocoa; Hot cocoa mix; Drinks in powder form containing cocoa; Chocolate coating; Chocolate pastries; Chocolate desserts; Vegan hot chocolate; Chocolate confectionery; Chocolate cake; Chocolate cakes; Chocolate waffles; Chocolate bunnies; Hot chocolate; Mousses (Chocolate -); Chocolate sauce; Chocolate sauces; Chocolate for toppings; Chocolate topping; Chocolate beverages with milk; Drinks flavoured with chocolate; Chocolate covered cakes; Ice creams flavoured with chocolate; Chocolate flavoured coatings; Chocolates; Chocolate pastes; Chocolate drink preparations flavoured with banana; Chocolate spreads; Chocolate spread; Hot chocolate mixes; Filled chocolate bars; Beverages with a chocolate base; Chocolate drink preparations; Ice beverages with a chocolate base; Beverages made with chocolate; Beverages made from chocolate; Drinks containing chocolate; Ice creams containing chocolate; Chocolate fillings for bakery products; Frozen yoghurt; Frozen yoghurts; Frozen yogurt; Porridge; Porridge oats; Ice-cream; Oat porridge; Milk chocolates.

Class 43: Coffee bar services; Cafe services; Café services.

108. The opposition fails in respect of the remaining goods and services. Subject to any successful appeal, the application will proceed to registration in respect of these remaining goods and services, being:

Class 25: Face masks [fashion wear].

Class 43: Sushi restaurant services; Fast-food restaurant services; Hotel restaurant services; Take-out restaurant services; Bar and restaurant services; Restaurant and bar services; Take-away restaurant services; Carvery restaurant services; Restaurant services; Salad bars [restaurant services]; Restaurant reservation services; Restaurants; Carry-out restaurants; Japanese restaurant services; Self-service restaurant services; Grill restaurants; Mobile restaurant services; Reservation of restaurants; Booking of restaurant seats; Serving food and drink for guests in restaurants; Catering in fast-food cafeterias; Serving food and drink in restaurants and bars; Restaurants (Self-service -); Self-service restaurants; Restaurant services for the provision of fast food; Tourist restaurants; Fast food restaurants; Restaurant services incorporating licensed bar facilities; Bistro services; Delicatessens [restaurants]; Providing food and drink for guests in restaurants; Provision of food and drink in restaurants; Providing restaurant services; Eateries; Restaurant information services; Providing food and drink in restaurants and bars; Restaurant services provided by hotels; Catering of food and drinks; Food and drink catering for banquets; Catering of food and drink; Catering (Food and drink -); Food and drink catering; Brasserie services; Reservation and booking services for restaurants and meals; Hotel catering services; Food and drink catering for institutions; Hotel reservations; Providing food and drink in bistros; Serving food and drink in Internet cafes; Take-away food and drink services; Takeaway food and drink services; Food and drink catering for cocktail parties; Cocktail lounge buffets; Take-away food services; Serving food and drink for guests; Takeaway food services; Resort hotel services; Making reservations and bookings for restaurants and meals; Catering services for company cafeterias; Serving food and drinks; Catering for the provision of food and drink; Take-away fast food services; Hospitality services [food and drink]; Providing

reviews of restaurants and bars; Providing hotel and motel services; Providing food and drink catering services for exhibition facilities; Corporate hospitality (provision of food and drink); Providing food and drink in Internet cafes; Catering services for providing European-style cuisine; Snack bar services; Catering services for the provision of food and drink; Providing reviews of restaurants; Club services for the provision of food and drink; Night club services [provision of food]; Hotel room booking services; Providing food and drink for guests; Hotel accommodation services; Private members dining club services; Hookah bar services; Self-service cafeteria services; Cafeteria services; Catering; Juice bars; Juice bar services.

COSTS

109. Both parties have achieved partial success in these proceedings; however, the opponent has been considerably more successful than the applicant and is therefore entitled to a contribution towards its costs. In the circumstances, I award the opponent the sum of **£950** as a contribution towards the cost of the proceedings, in accordance with Tribunal Practice Notice 1/2023. The sum is calculated as follows:

Official fee:	£100
Preparing and filing the TM7 and statement of grounds and considering the TM8 and counterstatement:	£250
Preparing evidence and considering the other side's evidence:	£600
Preparing and filing submissions in lieu of a hearing:	£350
Reduction for the applicant's partial success:	-£350
Total:	£950

110. I therefore order Alpay Bugur to pay Roar Fitness Limited the sum of **£950**. The above sum should be paid within twenty-one days of the expiry of the appeal period or, if there is an appeal, within twenty-one days of the conclusion of the appeal proceedings.

Dated this 30th day of July 2026

K HAZLEBACH

For the Registrar

Annex 1

The applicant's contested goods and services:

Class 25: Clothing; Knitwear [clothing]; Jackets [clothing]; Ready-to-wear clothing; Headbands [clothing]; Headbands for clothing; Gloves [clothing]; Gloves as clothing; Clothes; Aprons [clothing]; Jerseys [clothing]; Shorts [clothing]; Hoods [clothing]; Embroidered clothing; Wristbands [clothing]; Belts [clothing]; Belts for clothing; Rainproof clothing; Casual clothing; Waterproof clothing; Visors [clothing]; Jackets being sports clothing; Jackets (Stuff -) [clothing]; Stuff jackets [clothing]; Bottoms [clothing]; Ready-made clothing; Sports clothing; Athletic clothing; Tops [clothing]; Clothing for cycling; Weatherproof clothing; Water-resistant clothing; Beach clothing; Men's clothing; Dance clothing; Shirts; Turtleneck shirts; Short-sleeved shirts; Dress shirts; Long-sleeved shirts; Short-sleeve shirts; Open-necked shirts; Short-sleeved T-shirts; Polo shirts; Knit shirts; Sweat shirts; Casual shirts; Rugby shirts; Football shirts; Hooded sweat shirts; Soccer shirts; Golf shirts; T-shirts; Night shirts; Trousers shorts; Sport shirts; Tennis shirts; Sleep shirts; Fishing shirts; Yoga shirts; Under shirts; Tee-shirts; Boy shorts [underwear]; Printed t-shirts; Sleeveless jackets; Shorts; Sweatpants; Sweat pants; Sleeved jackets; American football shirts; Polo sweaters; Turtleneck sweaters; Casual trousers; Sweat shorts; Undershirts; Rugby shorts; Tracksuit bottoms; Jogging pants; Sweatshirts; Hoodies; Hooded sweatshirts; Hooded pullovers; V-neck sweaters; Beanie hats; Camouflage shirts; Camouflage pants; Sleeveless jerseys; Collared shirts; Shirt fronts; Jumpers; Jumper dresses; Jumpers [sweaters]; Jumpers [pullovers]; Polo knit tops; Snowboard trousers; Long sleeved vests; Athletic tights; Hats; Bobble hats; Bucket hats; Woolly hats; Baseball hats; Ski hats; Fashion hats; Beach hats; Sports caps and hats; Beanies; Caps [headwear]; Caps being headwear; Headgear for wear; Bonnets [headwear]; Cap visors; Headgear; Headwear; Bucket caps; Visors [headwear]; Visors being headwear; Head sweatbands; Knit jackets; Knitted clothing; Fishing headwear; Face masks [fashion wear]; Caps; Caps with visors; Baseball caps; Baseball caps and hats; Sports caps; Golf caps; Tank tops; Tracksuit tops; Tracksuits; Pyjamas.

Class 30: Cacao powder; Cocoa; Cocoa nibs; Cocoa powder; Cocoa products; Cocoa beverages; Cocoa drinks; Foods with a cocoa base; Chocolate; Chocolate truffles;

Cocoa mixes; Prepared cocoa and cocoa-based beverages; Beverages with a cocoa base; Drinking cocoa paste; Cocoa preparations; Chocolate extracts; Cocoa extracts for human consumption; Extracts of cocoa for use as flavours in beverages; Dairy-free chocolate; Chocolate coated macadamia nuts; Chocolate powder; Almonds covered in chocolate; Chocolate coated fruits; Chocolate syrup; Chocolate brownies; Ice beverages with a cocoa base; Chocolate syrups; Chocolate flavourings; Chocolate beverages; Chocolate bars; Chocolate fudge; Chocolate shells; Chocolate wafers; Chocolate coated nuts; Chocolate eggs; Chocolate mousses; Drinking chocolate; Chocolate fondue; Chocolate confectionery products; Confectionery chocolate products; Drinks prepared from cocoa; Hot cocoa mix; Drinks in powder form containing cocoa; Chocolate coating; Chocolate pastries; Chocolate desserts; Vegan hot chocolate; Chocolate confectionery; Chocolate cake; Chocolate cakes; Chocolate waffles; Chocolate bunnies; Hot chocolate; Mousses (Chocolate -); Chocolate sauce; Chocolate sauces; Chocolate for toppings; Chocolate topping; Chocolate beverages with milk; Drinks flavoured with chocolate; Chocolate covered cakes; Ice creams flavoured with chocolate; Chocolate flavoured coatings; Chocolates; Chocolate pastes; Chocolate drink preparations flavoured with banana; Chocolate spreads; Chocolate spread; Hot chocolate mixes; Filled chocolate bars; Beverages with a chocolate base; Chocolate drink preparations; Ice beverages with a chocolate base; Beverages made with chocolate; Beverages made from chocolate; Drinks containing chocolate; Ice creams containing chocolate; Chocolate fillings for bakery products; Frozen yoghurt; Frozen yoghurts; Frozen yogurt; Porridge; Porridge oats; Ice-cream; Oat porridge; Milk chocolates.

Class 43: Sushi restaurant services; Fast-food restaurant services; Hotel restaurant services; Take-out restaurant services; Bar and restaurant services; Restaurant and bar services; Take-away restaurant services; Carvery restaurant services; Restaurant services; Salad bars [restaurant services]; Restaurant reservation services; Restaurants; Carry-out restaurants; Japanese restaurant services; Self-service restaurant services; Grill restaurants; Mobile restaurant services; Reservation of restaurants; Booking of restaurant seats; Serving food and drink for guests in restaurants; Catering in fast-food cafeterias; Serving food and drink in restaurants and bars; Restaurants (Self-service -); Self-service restaurants; Restaurant services for the provision of fast food; Tourist restaurants; Fast food restaurants; Restaurant

services incorporating licensed bar facilities; Bistro services; Delicatessens [restaurants]; Providing food and drink for guests in restaurants; Provision of food and drink in restaurants; Providing restaurant services; Eateries; Restaurant information services; Providing food and drink in restaurants and bars; Restaurant services provided by hotels; Catering of food and drinks; Food and drink catering for banquets; Catering of food and drink; Catering (Food and drink -); Food and drink catering; Brasserie services; Reservation and booking services for restaurants and meals; Cafe services; Hotel catering services; Food and drink catering for institutions; Hotel reservations; Providing food and drink in bistros; Serving food and drink in Internet cafes; Take-away food and drink services; Takeaway food and drink services; Food and drink catering for cocktail parties; Cocktail lounge buffets; Take-away food services; Serving food and drink for guests; Takeaway food services; Resort hotel services; Making reservations and bookings for restaurants and meals; Catering services for company cafeterias; Serving food and drinks; Café services; Catering for the provision of food and drink; Take-away fast food services; Hospitality services [food and drink]; Providing reviews of restaurants and bars; Providing hotel and motel services; Providing food and drink catering services for exhibition facilities; Corporate hospitality (provision of food and drink); Providing food and drink in Internet cafes; Catering services for providing European-style cuisine; Snack bar services; Catering services for the provision of food and drink; Providing reviews of restaurants; Club services for the provision of food and drink; Coffee bar services; Night club services [provision of food]; Hotel room booking services; Providing food and drink for guests; Hotel accommodation services; Private members dining club services; Hookah bar services; Self-service cafeteria services; Cafeteria services; Catering; Juice bars; Juice bar services.

The opponent's relied upon goods and services:

Class 5: Nutritional drink mix for use as a meal replacement; Nutritional supplement energy bars; Nutritional supplements.

Class 25: Gymwear; Shorts [clothing]; Short-sleeved T-shirts; Socks; Sport shirts; Sports bras; Sports clothing; Sports garments; Sports socks; Sportswear; Sweat pants; Sweat shirts; Vest tops; Vests; Baseball caps; Tankinis; Tee-shirts; Track pants; Tracksuit tops; T-shirts.

Class 30: Coffee; Coffee based drinks.

Class 41: Arranging and conducting of classes; Personal coaching [training]; Personal fitness training services; Personal trainer services; Personal trainer services [fitness training]; Personal training services; Physical fitness centre services; Physical fitness centres; Physical fitness instruction; Physical fitness training services; Instruction in nutrition [not medical].